

2004 WL 4985738 (Miss.Cir.) (Trial Pleading)

Circuit Court of Mississippi,

First Judicial District.

Hinds County

Clara HAMBLIN, Plaintiff,

v.

CIMARRON MORTGAGE COMPANY d/b/a the Mortgage Warehouse; Prestige Title, Inc.; Raintree County Marketing d/b/a and/or n/k/a Integrity Mortgage Company; Total Home Improvement of Mississippi, Inc.; the Mortgage Stop, Inc.; Lance Persac; Jayson Ellis; Kim Poole; Clifton Pierce; Stephen R. Colson; Statewide Real Estate Valuation and Title Corporation; Jason E. O'Bryant; and Hope King, Defendants.

Case No. 251-04-58CIV.

June 22, 2004.

First Amended Complaint

COMES NOW Plaintiff Clara Hamblin and files this First Amended Complaint against Defendants and in support thereof would respectfully show unto the Court the following:

NATURE OF ACTION

This case is about fraud. Plaintiff Clara Hamblin ("Ms. Hamblin") is an uneducated, **elderly** lady living in rural Attala County, Mississippi. Under the guise of "making her house look like new," Defendants managed to saddle Ms. Hamblin with a high-cost mortgage that she cannot hope to repay and, even more egregious, at least one Defendant stole over \$16,500.00 that was supposed to go to Ms. Hamblin from the transaction. Therefore, not only was Ms. Hamblin fraudulently induced into a horrible mortgage transaction, at least one Defendant stole the proceeds that Ms. Hamblin was scheduled to receive from the transaction.

PARTIES

1. Plaintiff Clara Hamblin is an adult resident citizen of Attala County, Mississippi. She resides at 2870 A R Road 2207, Kosciusko, Mississippi 39090.
2. Defendant Cimarron Mortgage Company d/b/a The Mortgage Warehouse ("Defendant Cimarron") is, on information and belief, a Mississippi corporation doing business in Mississippi. It may be served with process through its duly appointed agent Paul J. Salvo at 6311 Ridgewood Road, Suite 400 W, Jackson, Mississippi 39211.
3. Defendant Prestige Title, Inc. ("Defendant Prestige") is a Mississippi corporation doing business in Mississippi. It may be served with process through its duly appointed agent Stephen R. Colson at 2301 14th Street #400, Gulfport, Mississippi 39502-2000.
4. Defendant Raintree County Marketing d/b/a and/or n/k/a Integrity Mortgage Company ("Defendant Integrity") is a Mississippi corporation doing business in Mississippi. It may be served with process through its duly appointed agent Warren Clifton Pierce at 1929 C Spillway Road, Brandon, Mississippi 39047.

5. Defendant Total Home Improvement of Mississippi, Incorporated (“Defendant THIM”) is a Mississippi corporation doing business in Mississippi. It may be served with process through its duly appointed agent Kim Poole at 304 Westwood Court, Madison, Mississippi 39110.

6. Defendant The Mortgage Stop, Inc. (“Defendant MSI”) is a Mississippi corporation doing business in Mississippi. It may be served with process through its duly appointed agent Bobby F. Fisher, Jr., 107 Grand Boulevard, Greenville, Mississippi 38930.

7. Defendant Lance Persac (“Defendant Persac”) is an adult resident citizen of Rankin County, Mississippi and may be served at the corporate office of The Mortgage Stop, Inc. at 407 Briarwood Drive, Suite 207-C, Jackson, Mississippi 39206, or at his residence at 258 Greensview Drive, Brandon, Mississippi 39047.

8. Defendant Jayson Ellis (“Defendant Ellis”) is an adult resident citizen of Rankin County, Mississippi and may be served at the corporate office of The Mortgage Stop, Inc. at 407 Briarwood Drive, Suite 207-C, Jackson, Mississippi 39206.

9. Defendant Kim Poole (“Defendant Poole”) is an adult resident citizen of Madison County, Mississippi and may be served at his residence at 304 Westwood Court, Madison, Mississippi 39110.

10. Defendant Clifton Pierce (“Defendant Pierce”) is an adult resident citizen of Rankin County, Mississippi and may be served at the corporate office of Raintree County Marketing d/b/a and/or n/k/a Integrity Mortgage Company at 1929 Spillway Road, Suite C, Brandon, Mississippi 39047, or at his residence at 206 Glen Cove Road, Brandon, Mississippi 39047.

11. Defendant Stephen R. Colson (“Defendant Colson”) is an adult resident citizen of Harrison County, Mississippi and may be served at the corporate office of Prestige Title Company at 2301 14th Street, # 580, Gulfport, Mississippi 39502.

12. Defendant Statewide Real Estate Valuation and Title Corporation (“Defendant SRE”) is a Mississippi corporation doing business in Mississippi. It may be served with process through its duly appointed agent Jason E. O'Bryant, 722 Sumner Avenue, Greenwood, Mississippi 38930.

13. Defendant Jason E. O'Bryant (“Defendant Bryant”) is an adult resident citizen of LeFlore County, Mississippi and may be served at the corporate office of Statewide Real Estate Valuation and Title Corporation at 722 Sumner Avenue, Greenwood, Mississippi 38930.

14. Defendant Hope King (“Defendant King”) is an adult resident citizen of Rankin County, Mississippi and may be served at the corporate office of Prestige Title, Inc. at 460 Briarwood Drive, Suite 400, Jackson, Mississippi 39206, or at her residence at 338 Rehobeth Road, Pelahatchie, Mississippi 39145.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction pursuant to [Miss. Code Ann. § 9-7-81](#).

16. Defendants are subject to the in personam jurisdiction of this Court as they are doing business in the State of Mississippi as described herein.

17. Venue is proper in this case pursuant to [Miss. Code Ann. § 11-11-3](#).

18. This is a combination contract, tort, and statutory action brought under the laws of the State of Mississippi, and under the common law of the State of Mississippi. Ms. Hamblin brings this action based entirely upon the common and statutory laws of the State of Mississippi, and Ms. Hamblin does not rely upon any federal statute, any federal question, and does not seek relief under any federal statute or law.

19. Defendants' liability arises from the fact that, directly and through their agents, employees, instrumentalities, and alter egos, they engaged in all or part of the unlawful acts, plans, schemes, or transactions complained of Each Defendant is jointly and severally liable for the damages caused to Ms. Hamblin. Each Defendant (and/or the agents of Defendants) substantially participated or assisted in the wrongdoing complained of and had knowledge of the false and misleading statements and deceptive activities and other wrongdoing alleged herein or recklessly disregarded such wrongful conduct.

20. Defendants have been properly joined in this action pursuant to the *ore tenus* order of this Court on June 18, 2004, as well as pursuant to [Rule 20 of the Mississippi Rules of Civil Procedure](#), in that all of the claims asserted in this action relate to and arise out of the same transaction or occurrence, and all of the claims asserted in this action present common questions of law or fact.

FACTS

21. Plaintiff Clara Hamblin is 72 years old and is one often children. She left school at the age of fifteen. Ms. Hamblin is an undereducated, unsophisticated consumer who has the reading ability of a second grader. She has been living alone since 1982 and has been on disability since the early 1980's.

22. Ms. Hamblin has lived in her house for over thirty years.

23. In 2001, a representative from Defendant THIM called Ms. Hamblin and offered to make repairs to her house. The next day, Poole of Defendant THIM, visited Ms. Hamblin and after looking at her home, represented that he could make her home "look like a new house." He also stated that through the contract for repairs he would pay off all of her bills.

24. At no time did Poole tell Ms. Hamblin how much the repairs would cost.

25. At no time did Poole tell Ms. Hamblin that he intended to **finance** the repairs via a re-**finance** of Ms. Hamblin's home.

26. On September 5, 2001 a lady, who Ms. Hamblin believes is a lawyer, visited Ms. Hamblin in her house and had her sign papers. The lady represented to Ms. Hamblin that the papers constituted the contract for the repairs Poole would make to Ms. Hamblin's house.

27. No other persons were present during the signing of the aforementioned papers other than the lady and Ms. Hamblin. Notably, no notary was present, but the documents purport to be notarized.

28. Initially, Poole represented to Ms. Hamblin that he would install shutters on all the windows, fully insulate the vinyl siding that he said that he would install on the house, and install vinyl siding on the porches.

29. Poole represented to Ms. Hamblin that she would "see no wood anywhere."

30. Contrary to Poole's representations, Poole did not fully furnish Ms. Hamblin's house with vinyl siding nor did he install any shutters on her windows. Defendant THIM also failed to install vinyl siding on the porches.

31. Ms. Hamblin complained about the incomplete job of Defendant THIM, but Poole refused to come back and complete the work. He eventually stopped taking Ms. Hamblin's calls.

32. At no time during the relevant time period did Poole or any other person inform Ms. Hamblin that she was refinancing her home.

33. The loan transaction is a high cost mortgage that does not provide any benefit to Ms. Hamblin.

34. Not only does the loan transaction not provide any benefit to Ms. Hamblin, but further, what supposed benefits she was to receive from the loan transaction, Defendants stole from her.

35. For example, per the loan transaction, Defendant Cimarron, acting through its agent Defendant Prestige, was supposed to pay Ms. Hamblin's indebtedness to Sears, Capitol One, Industrial **Finance** and Union Planters.

36. However, Defendant Cimarron, acting through its agents Defendants Prestige and Colson, did not pay Sears or Capitol One.

37. Further, per the loan transaction, Ms. Hamblin was to receive \$16,622.17. However, Ms. Hamblin did not receive a penny of this money.

38. Moreover, the subject loan transaction is at a higher rate of interest than the loans that it replaced. Defendants duped Ms. Hamblin into taking out a mortgage that she did not need, and from which she did not benefit.

39. Upon information and belief, Defendants Integrity, MSI, Persac, Ellis and/or Pierce directly or indirectly falsified information on the loan papers.

40. By way of example, and in no way limiting Ms. Hamblin's allegations, the following false information appears on the loan documents:

- a. Ms. Hamblin's income is falsely stated as \$2,571.00, while her actual monthly income is only \$572.00 per month;
- b. The loan application states that Ms. Hamblin completed the twelfth grade, but Ms. Hamblin dropped out of school when she was fifteen years old; and
- c. The house was fraudulently appraised by Defendants SRE, O'Bryant and/or others at \$45,000.00 and/or \$70,000.00, but the house is worth only a fraction of that.

41. Defendant Integrity brokered the loan to Defendant Cimarron.

42. Defendant Cimarron funded the loan and closed the loan through its agents Defendants Prestige and Colson.

43. The loan closing was replete with fraud in that two of Ms. Hamblin's loans were not paid off- the loan documents show that these two loans should have been paid off- and at least one of Defendants stole the \$16,622.17 that was supposed to go to Ms. Hamblin.

44. The actual signing of the loan documents occurred in Ms. Hamblin's house and no notary was present.

45. To date, Ms. Hamblin is still not fully able to understand the subject transaction and all the ramifications of it.

COUNT I- DECLARATORY RELIEF/RESCISSION

46. Ms. Hamblin incorporates the preceding paragraphs as if fully rewritten herein.

47. Defendants THIM and Poole fraudulently induced Ms. Hamblin into entering into a mortgage loan agreement that she did not understand and that was of no value to her.

48. Further, Defendants Integrity, MSI, Persac, Ellis and/or Pierce brokered the mortgage loan agreement after including false information in the loan documents.

49. Through Defendants' knowing material misrepresentations that Ms. Hamblin reasonably relied upon to her detriment, she entered into a mortgage loan agreement that has resulted in the potential foreclosure of her home of over thirty years.

50. There were defects in the bargaining process that precluded any meaningful choice by Ms. Hamblin. Defendant King knew or should have known that Ms. Hamblin is an **elderly** lady, who had limited educational opportunities who does not read or see well and who is unused to dealing in **financial** matters.

51. Defendants are in the business of selling loans. They are sophisticated businesses.

52. Defendant King knew or should have known that Ms. Hamblin did not have the capacity to understand the terms of the loan arranged by Defendants. Ms. Hamblin remains unclear about what happened to her. She was unaware that the terms of the loan were onerous, oppressive and one-sided, unreasonably favoring the Defendants with an interest rate, closing costs, and **finance** charges that were exorbitant.

53. Ms. Hamblin was also unaware that she had a three-day right to rescind the mortgage loan pursuant to the Mississippi Home Solicitation Sales Act, [Miss. Code Ann. § 75-66-1 et seq.](#), and the Mississippi Mortgage Consumer Protection Act, [Miss. Code Ann. § 81-18-1 et seq.](#)

54. The loan agreements and related documents are unconscionable and should be declared null and void from their inception.

COUNT II- FRAUD

55. Ms. Hamblin incorporates the preceding paragraphs as if fully set forth herein.

56. Defendants THIM, Poole, Integrity, MSI, Persac, Ellis and/or Pierce fraudulently induced Ms. Hamblin to enter into a mortgage loan agreement that she did not understand and that was of no value to her.

57. Through Defendants THIM, Poole, Integrity, MSI, Persac, Ellis and/or Pierce knowing material misrepresentations that Ms. Hamblin reasonably relied upon to her detriment she entered into a mortgage loan agreement that has resulted in the impending foreclosure of her home of over thirty years.

58. Further, Defendants THIM, Poole, Integrity, MSI, Persac, Ellis and/or Pierce secured an appraisal of the house that is nothing short of preposterous. Ms. Hamblin's house was appraised at \$45,000.00 and/or \$70,000, far more than it is actually worth.

59. Moreover, Defendants Cimarron, Prestige and Colson failed to pay off loans that were supposed to be paid off. At least one of the Defendants stole the \$16,622.17 that Ms. Hamblin was supposed to receive from the transaction.

60. As a proximate consequence of the Defendants' fraudulent conduct as set forth herein, Ms. Hamblin has suffered compensatory damages in an amount to be proven at trial.

61. Additionally, by reason of Defendants' outrageous conduct, Ms. Hamblin is entitled to recover punitive damages in an amount to be proven at trial.

COUNT III - BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

62. Ms. Hamblin incorporates the preceding paragraphs as if fully set forth herein.

63. Inherent in every contract executed in Mississippi is the duty of good faith and fair dealing.

64. Each of the Defendants formed a relationship with Ms. Hamblin once Defendants entered contractual relations with her.

65. This relationship imposes an implicit duty of good faith and fair dealing upon Defendants.

66. The contractual duty of good faith and fair dealing operates to effectuate the reasonable expectations of the parties under the terms of their contracts.

67. Defendants breached the duty of good faith and fair dealing owed to Ms. Hamblin in numerous ways including, but not limited to:

- a. failing to properly perform the repairs to Ms. Hamblin's house;
- b. falsely reporting Ms. Hamblin's income;
- c. falsely reporting Ms. Hamblin's education;
- d. improperly appraising the value of Ms. Hamblin's home;
- e. failing to pay off loans that Defendants represented they would pay off; and
- f. stealing the \$16,622.17 that Ms. Hamblin was supposed to receive from the transaction.

68. Defendants' conduct violates standards of decency, fairness, and reasonableness.

69. As a result of Defendants' conduct, Ms. Hamblin has been irreparably harmed and is entitled to compensatory damages in an amount to be proven at trial.

70. Further, by reason of Defendants' outrageous conduct, Ms. Hamblin is entitled to recover punitive damages in an amount to be proven at trial.

COUNT IV - NEGLIGENT AND/OR WANTON MISREPRESENTATION

71. Ms. Hamblin incorporates the preceding paragraphs as if fully set forth herein.

72. Notwithstanding the preceding allegations concerning fraud, and in the alternative, Defendants' misrepresentations and omissions as described above constitute negligent and/or wanton misrepresentation.

73. Ms. Hamblin justifiably relied upon the truth of the misrepresentations and material omissions of Defendants and their agents and employees and had no knowledge of their falsity.

74. The negligent and/or wanton misrepresentations were material, and they induced Ms. Hamblin to enter a loan agreement for a loan she neither wanted nor needed and to pay inflated charges and costs in connection therewith.

75. As a proximate consequence of said wrongful conduct, Ms. Hamblin has suffered compensatory damages in an amount to be proven at trial.

76. Defendants' negligent and/or wanton misrepresentations and/or omissions were reckless and/or gross and were made with complete disregard for the welfare of Ms. Hamblin, thereby entitling Ms. Hamblin to the recovery of punitive damages against Defendants in an amount to be proven at trial.

COUNT V- NEGLIGENCE AND WANTONNESS

77. Ms. Hamblin incorporates the preceding paragraphs as if fully set forth herein.

78. Defendants were negligent and/or wanton in numerous ways including, but not limited to:

- a. Negligently hiring, training and/or supervising their agents;
- b. Negligently explaining, soliciting and representing Defendants' services;
- c. Failing to supervise and monitor the activities of all agents selling Defendants' services;
- d. Failing to determine if Ms. Hamblin needed the mortgage loan that she was induced by Defendants to enter as described above;
- e. Failing to properly perform the repair work on Ms. Hamblin's house;
- f. Failing to adequately and properly disperse monies associated with the loan.
- g. Individually and collectively failing to carry out each of the foregoing duties owed Ms. Hamblin as enumerated in all preceding paragraphs.

79. As a proximate consequence of Defendants' negligence and/or wantonness as set forth hereinabove, Ms. Hamblin suffered harm and is entitled to an award of compensatory damages in an amount to be proven at trial.

80. Defendants' conduct was willful, wanton, malicious and outrageous, thereby entitling Ms. Hamblin to recover punitive damages against Defendants in an amount to be proven at trial.

COUNT VI - MISSISSIPPI MORTGAGE CONSUMER PROTECTION ACT

81. Ms. Hamblin incorporates the preceding paragraphs as if fully set forth herein.

82. Defendants Integrity, MSI and Cimarron are mortgage companies subject to the provisions of the Mississippi Mortgage Consumer Protection Act, [Miss. Code Ann. § 81-18-1](#) *et seq.*

83. [Miss. Code Ann. § 81-18-27](#) prohibits certain acts. In violation of [§ 81-18-27](#) Defendants:

- a. Misrepresented or concealed material facts, terms and conditions of the mortgage loan;
- b. Engaged in practices that were not in good faith;
- c. Operated a fraud upon Ms. Hamblin in connection with the sale of a mortgage loan; and
- d. Made the mortgage loan with the intent to foreclose on the property.

84. As a proximate consequence of Defendants' conduct as set forth hereinabove, Ms. Hamblin suffered compensatory damages in an amount to be proven at trial.

85. Further, Defendants' conduct is replete with fraud and deceit and, therefore, Ms. Hamblin is entitled to an award of punitive damages in an amount to be proven at trial.

COUNT VII- MONEY HAD AND RECEIVED

86. Ms. Hamblin incorporates the preceding paragraphs as if fully rewritten herein.

87. The money Ms. Hamblin has paid to Defendants and the current mortgage holder (who is not a party to this lawsuit) and Ms. Hamblin's current indebtedness, both of which result from the subject loan transaction, constitute money paid as a result of fraud.

88. As such, the money that Ms. Hamblin has paid should be returned to her.

89. Further, the loan documents creating the indebtedness should be ordered void and Ms. Hamblin should be relieved of the debt.

COUNT VIII - CIVIL CONSPIRACY

90. Ms. Hamblin incorporates the preceding paragraphs as if fully rewritten herein.

91. Defendants conspired to defraud and deceive Ms. Hamblin for the purpose of inducing her to enter into a horrible mortgage transaction, one that saddled her with unmanageable debt and provided her no benefit.

92. Defendants, acting individually and in concert engaged in multiple fraudulent and deceptive practices for the sole purpose of furthering their **financial** gain to Ms. Hamblin's detriment.

93. Ms. Hamblin hereby requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Ms. Hamblin demands judgment as follows:

- a. declaring the subject loan transaction to be null and void and declaring that the title to Ms. Hamblin's house be cleared of all liens, deeds of trust, or other encumbrances resulting from the subject loan transaction;
- b. Awarding actual and compensatory damages against each Defendant, jointly and severally, in favor of Ms. Hamblin, for all losses and damages, including all consequential losses and damages, suffered as a result of the wrongdoing complained of herein, together with pre and post judgment interest at the maximum rate allowable by law;
- c. Awarding punitive damages against each Defendant, jointly and severally, in favor of Ms. Hamblin, as a result of the wrongdoing complained of herein, together with pre and post judgment interest at the maximum rate allowable by law;
- d. Awarding interest, including pre-judgment and post-judgment interest;
- e. Awarding attorneys' fees and costs; and

f. Granting such other and further relief as the nature of the case may require and as the Court deems just and proper under the circumstances.

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